



Osteopathic Practice Committee
19 September 2013
Professional Indemnity Insurance consultation

Classification	Public
Purpose	For decision
Issue	<p>General Osteopathic Council is required to consult with key stakeholders groups on possible changes to its Professional Indemnity Insurance Rules 1998.</p> <p>This paper sets out the consultation document for the Committee to review.</p>
Recommendations	<ol style="list-style-type: none">1. To consider the Professional Indemnity Insurance consultation document.2. To recommend Council publish the Professional Indemnity Insurance consultation document following the October 2013 Council meeting.
Financial and resourcing implications	None.
Equality and diversity implications	None.
Communications implications	The consultation will be launched following approval to publish by Council in October 2013.
Annex	Professional indemnity insurance consultation document
Author	Matthew Redford

Background

1. In May 2013 the Osteopathic Practice Committee received a paper which explained that following the implementation of EU Directive 2001/24/EU on cross border patient rights, the General Osteopathic Council (GOsC) would need to make changes to its Professional Indemnity Insurance Rules 1998.
2. The Committee was asked to consider five aspects of current and future insurance requirements and to give a view in relation to each. The five areas considered were:
 - a. The degree of prescription in relation to risks;
 - b. The appropriate amount of insurance cover required.
 - c. The requirement for run-off cover;
 - d. Monitoring of compliance with the insurance rules;
 - e. Requirements for registrants practising overseas.

Discussion

3. Following feedback from the Committee, a draft consultation document of the key principles has been prepared. The draft is annexed to this paper.
4. The intention is that subject to the Committee's views and the approval of Council, that a consultation should take place on the principle set out in the paper. The consultation will be primarily with registrants, professional bodies and insurers. However, we will also seek to engage with patient interests through our Patient and Public Partnership Group and other means.
5. Once the consultation has concluded and the results analysed, we will commence the drafting of new rules to replace the General Osteopathic Council (Professional Indemnity Insurance) Rules Order of Council 1998. The draft rules will require a further consultation.

Recommendations:

1. To consider the Professional Indemnity Insurance consultation document, and
2. To recommend Council publish the professional indemnity insurance consultation document following the October 2013 Council meeting.

Professional indemnity insurance consultation document

Summary

1. This consultation document considers proposed changes to the General Osteopathic Council (Professional Indemnity Insurance) Rules 1998 [the Rules] and the principles that should underpin new rules.
2. The GOsC will be required to draft and implement new Rules following anticipated changes to the Osteopaths Act resulting from the introduction of EU Directive 2001/24/EU later this year.
3. As a condition of registration, osteopaths already demonstrate to the GOsC that they hold insurance cover in line with the Rules. When drafting new Rules we will seek to simplify how registrants demonstrate to us that they hold insurance cover in line with those Rules.
4. This consultation document outlines some challenges with the current Rules, along with some ways in which the Rules might be amended. This consultation has been designed to help inform our thinking around the development of new Rules on which we will consult further in 2014.
5. It is hoped that those with an interest in osteopathy will contribute to the consultation. This includes patients and the public, current registrants and their professional groups, students at osteopathic educational institutions and those firms who provide insurance cover to the osteopathic profession.

Background information

6. Registrants are required to hold professional indemnity insurance cover in accordance with the Rules as a condition of registration.
7. Within healthcare regulation, not all regulatory bodies currently have a statutory requirement for registrants to hold insurance or indemnity cover. For the protection of patients, the UK Government believe this to be unsustainable, and launched an independent review to consider whether the most cost effective and proportionate means of resolving the issue was to make holding insurance or indemnity cover a condition of registration.
8. The review, led by Finlay Scott, former Chief Executive of the General Medical Council, reported its findings in June 2010 and concluded that *'making insurance or indemnity a statutory condition of registration is the most cost effective and proportionate means of achieving the policy objective.'*
9. At the same time, EU Directive 2001/24/EU on the application of patients' rights in cross-border healthcare was under negotiation by the European Union Commission, Parliament and Council of Ministers. The Directive came into force on 9 March 2011 with Article 4(2)(d) placing a requirement on Member States to ensure that by 25 October 2013, they have transposed into domestic law:

'systems of professional liability insurance, or a guarantee or similar arrangement that is equivalent or essentially comparable as regards its purpose and which is appropriate to the nature and the extent of the risk, are in place for the treatment provided in [Member States]'

10. The UK Government considered the findings of the independent review, and the need to implement the Directive, and concluded that it was right to introduce a requirement on all healthcare professionals to hold insurance or indemnity cover as a condition of registration.
11. When the EU Directive is implemented later this year the Osteopaths Act will be amended requiring the GOsC to introduce new statutory Rules that meet the requirements of the amended Act. This consultation document will help explore the principles underpinning the Rules and aid our thinking as new Rules are developed.

Consultation questions

12. There are seven parts to this consultation document with questions provided at the end of each section.

Section 1: Obligation to insure

The current Rules say:

3.(1) Subject to Rule 3(2) any osteopath who practises as an osteopath must be insured against claims for any of the prescribed risks; and shall obtain and maintain cover for not less than the prescribed amounts.

3.(2) An osteopath who is a registered practitioner need not obtain separate insurance to cover his practice as an osteopath if he is indemnified in his capacity as a registered medical practitioner and that indemnity complies with the insurance requirements set out in the prescribed risks and is approved by the Registrar

What is the issue?

Should there be an obligation on healthcare professionals to insure?

Discussion

Fundamental to patient safety is the right of patients to seek redress when things go wrong. On the occasions when things do go wrong and the patient seeks redress, the healthcare professional benefits from holding insurance cover.

Not all healthcare professionals are required to hold insurance cover as a condition of being registered with a healthcare regulator. The UK Government does not believe this to be sustainable and has concluded that there should be an obligation on all healthcare professionals to hold insurance or indemnity as a condition of registration.

Osteopaths already demonstrate to the GOsC that they hold insurance cover in line with the Rules as a condition of registration.

Consultation questions

1. Are there any circumstances under which an osteopath registered with the GOsC should not be required to have insurance? If yes, please describe those circumstances.

Section 2: Prescribed risks

The current Rules say:

4. *The insurance to be obtained by an osteopath shall cover the following risks:*

a) Any legal liability for any negligent act, error or omission in professional services rendered or which should have been rendered by an osteopath whilst practising as an osteopath;

b) Any liability for claims for public liability or product liability arising from death or injury to third parties or damage to third party property caused by the osteopath in the course of providing his professional services or in the course of supplying products in connection with those professional services;

c) Any legal liability of an osteopath in respect of the risks set out in (a) or (b) above which are attributable to his employees, partners, associates, co-directors or agents and which are connected with the provision of osteopathic services on his behalf or under his supervision;

d) Any liability to pay all legal costs, of and incidental to all proceedings which may be recovered by a claimant against an osteopath arising out of any claim in respect of the prescribed risks, and all or any costs, fees and expenses which may be incurred by an osteopath in defending any claim in respect of the risks set out in (a) to (c) above.

5. *Any insurance which is obtained by an osteopath in respect of the prescribed risks need only cover his liability as a practising osteopath providing professional services in the United Kingdom.*

What are the issues?

Are the current Rules too prescriptive?

Can the current Rules be simplified?

Discussion

When compared to other healthcare professionals the Rules for osteopaths are quite prescriptive although it is recognised that there are clear differences in the environment in which osteopaths practise.

However, consideration should be given as to whether it is more advantageous for the Rules to remain prescriptive or whether the Rules should be simplified with a greater discretion for interpretation by registrants and their insurers. More prescriptive Rules have the advantage of ensuring that considerations of cost do not override the protection of patients, while less prescription would accommodate the variety of osteopathic practice.

If choosing to simplify the Rules, it may be possible to provide additional guidance to registrants about matters to be considered when deciding what risks their insurance policy should cover.

There are advantages of each approach which include:

Advantages of prescriptive rules	Advantages of non-prescriptive rules
Clarity for registrants and insurance providers.	Greater flexibility for registrants and insurers.
Coverage of risks guaranteed.	Can be more responsive to changing regulatory environment.
	Easier to change guidance than legislation so less likely to become out of date.

Consultation questions

2. Do you agree that in relation to the prescribed risks there should be minimum insurance requirements set out in the Rules? If not, please explain why.
3. If the prescribed risks are to be set at a minimum level, what risks should be included?
4. Would it be helpful if the GOsC were to provide guidance for registrants about things to consider when deciding what risks should be included in the cover?
5. What areas or risks do you think this guidance should cover?

Section 3: Prescribed amounts

The current Rules say:

6. The minimum amount of insurance cover to be obtained by an osteopath in respect of the prescribed risks is £2,500,000 in the aggregate in the cases of rules 4(a), 4(b) and 4(c).

What are the issues?

Should the GOsC prescribe a minimum limit of cover in legislation?

Should the current minimum level of cover increase?

Discussion

For the protection of patients it is argued that the Rules should prescribe a minimum limit of cover. It is recognised that as healthcare professionals there is an onus on registrants to ensure they have an appropriate and adequate level of cover suitable for their professional activities. It is also recognised that a number of current insurance providers offer a level of cover far in excess of the £2.5m minimum level of cover as part of their standard package.

Advantages of setting a minimum level of cover in legislation	Disadvantages of setting a minimum level of cover in legislation
Ensures cost considerations do not override protection of patients.	The Rules are unlikely to be changed again for a number of years leading to the erosion of the minimum level of cover.
Sets in legislation a permanent benchmark.	Less flexibility/responsiveness to changes in regulatory environment.

Consultation questions

6. Do you agree that it is appropriate for GOsC to prescribe a minimum limit of cover in legislation? If no, please provide your reasons.
7. Do you agree that the minimum limit of cover should be increased from £2.5m? If no, please provide your reasons.
8. If you believe the minimum limit of cover should increase, please state to what level you think it should be increased?

Section 4: Run-off cover

The current Rules say:

7. Every practising osteopath shall maintain insurance cover for the prescribed risks and in the prescribed amounts to cover any claims in respect of his practice as an osteopath which may arise after the date on which he ceases to practise as an osteopath for whatever reason.

What are the issues?

Should run-off cover feature in the Rules?

If yes, for how long should run-off cover last?

Discussion

Run-off cover means that should a claim be made against you retrospectively, after you cease to practise **or** change insurance provider, your past practise is still covered by insurance. This ensures ongoing patient protection as there is no way to protect former patients once a registrant leaves the Register.

The length of time run-off cover should last is equally important. It may be argued that run-off cover should last for as long as claims may be received, i.e. indefinitely, or it may be argued that the length of run-off cover should be aligned with Section D6 of the *Osteopathic Practice Standards* which say patient records should be retained:

- For a minimum of eight years after their last consultation, or
- If the patient is a child, until after their 25th birthday

Consultation questions

9. Do you agree that a requirement for run-off cover should be maintained as an important element of the Rules? If no, please provide your reasons.

10. For how long should the run-off cover continue? Please provide your reasons.

Section 5: Evidence of compliance

What the current Rules say:

8.(1) Following registration, subsequent renewal or at any other time that the Registrar may stipulate an osteopath must provide the General Council with evidence acceptable to it that he has a current insurance policy which complies with the requirements of these Rules.

8.(2) Any osteopath whose insurance ceases to comply with the requirements of these Rules or ceases altogether (for whatever reason) shall notify the General Council forthwith.

What are the issues?

Is the current mechanism for a registrant to demonstrate to the GOsC they hold insurance too burdensome?

Are there alternative mechanisms?

Discussion

The current registration and re-registration processes require all registrants to demonstrate they hold professional indemnity insurance in accordance with the Rules. Registrants demonstrate they hold professional indemnity insurance either by submitting a copy of their schedule of cover, or by their insurance provider notifying the GOsC directly, when their renewal of registration is due.

It is recognised that this mechanism can be administratively burdensome for the registrant as well as the insurance provider. It is also recognised that it is different to other aspects of the renewal of registration process where self-declaration is considered acceptable.

An alternative mechanism for registrants to demonstrate they hold insurance in line with the Rules would be through a self-declaration as part of the renewal process.

The advantage of a self-declaration approach is that it would immediately reduce the administrative burden on registrants and the GOsC. As a safeguard the Registrar would retain the ability to request evidence of insurance from a registrant at any time he chooses.

In addition there should be an onus on a registrant to advise GOsC immediately if their insurance cover ceases to comply with the requirements of the Rules for whatever reason.

Consultation questions

11. Do you agree with the principle that registrants should be required to demonstrate they hold insurance cover in line with the Rules? If not, please provide your reasons.

12. Which mechanism for a registrant to demonstrate they hold insurance cover in line with the Rules do you support:
 - a. Hard copy evidence submitted to GOsC;
 - b. Self declaration during renewal of registration cycle;
 - c. Other, please describe.
Please provide your reasons.

13. Do you agree that the Registrar should retain the ability to request evidence of insurance from a registrant at any time he chooses? If no, please provide your reasons.

14. Do you agree that if insurance cover ceases, for whatever reason, the registrant in question should immediately advise the GOsC? If no, please provide your reasons.

Section 6: Non-compliance

The current Rules say:

9. Any failure by an osteopath to maintain insurance in accordance with these Rules may be treated as constituting unacceptable professional conduct and dealt with accordingly.

What is the issue?

How should an osteopath who fails to maintain insurance in accordance with the Rules be treated?

Discussion

Maintaining appropriate professional indemnity insurance in accordance with the Rules is part of being a healthcare professional. Patients are entitled to be treated by a healthcare provider who is fit to practise and who holds professional indemnity insurance for the rare occasions when things do go wrong. In these circumstances there is clear benefit for the registrant to have the insurance cover in place.

There would appear to be two main ways to treat a registrant who fails to maintain insurance in line with the Rules.

- a. The registrant is referred to the Professional Conduct Committee (PCC) as having unacceptable professional conduct.
- b. The registrant is administratively removed from the Register for failing to comply with the requirements of registration.

The advantages of referring to the PCC are that the registrant remains on the Register and is held to account for their actions. However, this route would be costly and time consuming.

The alternative approach of removing a registrant from the Register has the advantage of bringing about a speedy and more cost effective resolution. However, it may not be considered to be a proportionate approach as the registrant is prevented from practising.

Consultation questions

15. Do you agree with the principle that a registrant who fails to maintain insurance cover in line with the Rules be held to account? If not, please explain your reasons.
16. How do you believe a registrant should be held to account:
 - a. Referred to the PCC for unacceptable professional conduct;
 - b. Administratively removed from the Register.Please provide your reasons.

Section 7: Overseas registrants

What the current Rules say:

The current Rules suggest a registrant need only have insurance in respect of the prescribed risks to cover their liability as a practising osteopath providing professional services in the United Kingdom.

What are the issues?

The Rules should be clearer about the requirements on overseas registrants

Discussion

For the protection of patients all registrants, including those who practise overseas but are on the GOsC Register, should hold insurance. Registrants who are practising overseas where such cover is available, should hold insurance and if required be able to demonstrate this to the GOsC.

Consultation questions

17. Do you agree with the principle that registrants who are practising overseas should, where such cover is available, hold insurance and if required be able to demonstrate this to the GOsC? If no, please provide your reasons.